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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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JUN 22 1994

In the Matter of)

Implementation of Section 309(j))
of the Communications Act)
Competitive Bidding)

PP Docket No. 94-100)
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Petition for Reconsideration of U.S. Intelco Networks, Inc.

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Date: June 22, 1994

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In the Matter of)
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Implementation of Section 309(j)) PP Docket No. 93-253
of the Communications Act)
Competitive Bidding)

Petition for Reconsideration of U.S. Intelco Networks, Inc.

INTRODUCTION

U.S. Intelco Networks, Inc. ("USIN"), on its own behalf and on behalf of its Independent Telephone Company ("ITC" or "Independent") owners and users, by its attorneys and pursuant to Section 1.429 of the Commission's Rules,¹ respectfully seeks reconsideration of the Third Report & Order ("Order") released herein on May 10, 1994.² USIN submits that the Order fails to address the Congressional mandate to ensure meaningful opportunities for rural telephone companies to participate in the provision of new radio-based services.

¹/ 47 C.F.R. § 1.429.

² Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, Third Report & Order, released May 10, 1994; See Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, Second Report & Order, released April 20, 1994; 59 Fed. Reg. 22980 (May 4, 1994) ("Order"). See Notice of Proposed Rulemaking, PP Docket 93-253, FCC 93-455, released October 12, 1993. ("NPRM").

USIN is wholly owned by 282 ITCs and provides a variety of services to over 1000 Independents nationwide. USIN is committed to assisting rural telecommunications providers in bringing new spectrum-based services, including narrowband PCS, to rural America. Having submitted Comments and Reply Comments in this proceeding, USIN's interest in auction design and implementation is a matter of record.³

The Third Report & Order acknowledges a Congressional mandate to ensure the opportunity for participation by each category of designated entity. See Third Report & Order, para. 66; Id., para. 73. These "designated entities" include rural telephone companies, and were identified in plain statutory language as warranting procedures to assure them the opportunity to participate in the provision of spectrum-based services. See 47 U.S.C. § 309(j)(4)(D); 47 U.S.C. § 309(j)(3)(B); Third Report & Order, para. 73.

EXECUTIVE SUMMARY

The Third Report & Order elects not to provide bidding credits or other preferences to rural telephone companies, based on the argument that preferences are unnecessary given the relatively modest build-out costs for systems in narrowband PCS services. See Third Report & Order, para. 71. The Commission has apparently determined that the Congressional mandate, with respect to rural

^{3/} See Comments of U.S. Intelco Networks, Inc., filed herein November 10, 1993; Reply Comments of U.S. Intelco Networks, Inc., filed herein November 24, 1993.

telephone companies, can be fulfilled without any rational consideration of the economic characteristics of rural telephone companies, or any explanation of the relationship between the characteristics of rural telephone companies, and the costs of competing for spectrum at auction with much larger bidders. Due to the restrictive nature of the definition of a "small business," many rural telephone companies will not qualify for installment payments.

Moreover, the FCC fails to make a reasoned distinction between its decision to provide bidding credits for minorities and women on the basis that they can play a vital role in serving certain geographic areas and other overlooked markets, but to provide no bidding credits for rural telephone companies, although the role of rural telephone companies in serving overlooked geographic areas is an obvious matter of public record. USIN submits that this position is contrary to the language and intent of the statute, represents an irrational and unjustified analysis, and is otherwise contrary to the public interest.

DISCUSSION

In the Third Report & Order, the Commission provides no rational justification for its belief that no preferences are needed to address the Congressional mandate. Specifically, the Commission states:

"We have decided not to provide bidding credits (or other separate preferences) to rural telephone companies bidding on

narrowband PCS spectrum because we conclude that, given the relatively modest build-out costs for systems in this service, such preferences are unnecessary. . . . Moreover, in view of the fact that rural telephone companies may use their existing infrastructure to provide integrated narrowband PCS services . . . they will have ample opportunity to participate in narrowband PCS. Rural telephone companies will, however, . . . qualify for installment payments if they satisfy the eligibility criteria for small businesses." Third Report & Order, para. 71.

The Commission should reconsider this decision for the following reasons: 1) the Commission erroneously states that low build-out costs (including cost savings obtained through integrating the local telephone network) render unnecessary preferences intended to compensate for the economic disadvantages faced by smaller entities when bidding against larger entities⁴; 2) the Commission's provision of installment payments to rural telephone companies only if they qualify as small businesses is excessively restrictive, given the existing definition of a small business; 3) the Commission arbitrarily provides preferences for women and minorities based on their role in serving overlooked markets, while providing no preferences for rural telephone companies who have demonstrated a commitment to serving such overlooked markets.

⁴ USIN notes that the Third Report & Order does not provide any analysis or information with respect to the expected build-out costs, the bidding power of rural telephone companies or other designated entities, the relationship of the costs of service to the costs of a license, or the extent to which efficiencies created through the use of existing networks are sufficient to enable small, rural telephone companies to successfully bid for spectrum against larger entities.

The fact that build-out costs may be "relatively modest" does not result in service participation by rural telephone companies where licenses are awarded via competitive bidding. Similarly, the efficiencies created by the ability of a telephone company to provide integrated services, Third Report & Order, para. 79, bear no relationship to the ability of a small, rural telephone company to successfully bid for spectrum against deep-pocket players with far greater financial resources.

The statute makes clear that the Congressional mandate is directed towards the disadvantages smaller entities face in bidding against larger deep-pocket players, and thus prevent competitive bidding from resulting in excessive concentration. The Commission's statement fails to demonstrate how such reduced build-out costs relate to the problems created by the disparity in resources between small, rural telephone companies and larger companies. Moreover, the Commission's reasoning is incorrect: if network costs for narrowband are low, they are low for all bidding entities, and thus bear no relation to the disparity which is the concern of the Congressional mandate.⁵

It bears repeating that Congress specifically included "rural

⁵ Similarly, efficiencies created by the ability to integrate narrowband into existing networks are available to a number of companies, including large local exchange holding companies, cable companies, and other telecommunications providers whose financial resources far exceed that of small, rural telephone companies. Thus, these efficiencies do not provide any advantage for rural telephone companies when bidding against these larger entities.

telephone companies" in the group of entities designated for protection. See 47 U.S.C. § 309(j)(3)(B); Third Report & Order, para. 66. Given the Commission's recognition of this Congressional mandate, it is disturbing that any discussion of the economic characteristics of rural telephone companies, and their ability to compete in auctions against larger entities, is completely absent from the Third Report & Order. See Third Report & Order, para. 73 (noting that Congress mandated that the Commission "ensure" the opportunity for participation by each category of designated entity; that the Commission report to Congress in 1997 as to whether designated entities were able to participate successfully).

Specifically, USIN submits that the Third Report & Order's treatment of rural telephone companies appears to be based on the unsupported and erroneous belief that rural telephone companies are, unlike other designated entities, financially able to compete unassisted in spectrum auctions against larger telecommunications service providers, and do not need preferences when bidding on spectrum. There is no discussion of the relative financial resources of rural telephone companies, or other evidence provided in the Third Report & Order for this conclusion. That the Commission would apparently act on a belief not supported in the record or discussed in the Third Report & Order, is especially disconcerting where the Commission has been directed by a Congressional mandate to ensure opportunities for rural telephone companies. The Commission's election to gamble with this mandate

should, at a minimum, be supported with specific and comparative facts regarding the ability of rural telephone companies to compete against larger entities in spectrum auctions.

The Commission's decision to provide for installment payments for rural telephone companies which qualify as "small businesses," see Third Report & Order, para. 71, does not respond to the Congressional mandate, as small businesses are defined in a manner which will limit their availability to rural telephone companies. Although the FCC recognizes that rural telephone companies are also "small," Second Report & Order, para. 282, installment payments will not be available to many rural telephone companies under the existing rules.⁶

Many rural telephone companies, due to the excessively restrictive definition, do not meet the definition of a "small business." As noted by the Small Business Administration, the proposed definition of a small business is excessively restrictive, given the nature of the wireless communications marketplace. Comments of the Chief Counsel for Advocacy, U.S. Small Business Administration, at 8-9. The Commission has further erred by failing to give any consideration to the fact that while rural telephone companies have been consistently recognized and treated

⁶ The Commission's auction rules currently define a "small business" as one with less than \$6 million in net worth, and less than \$2 million in net profits. 47 C.F.R. § 1.2110(b); Second Report & Order, para. 267.

as small, they (along with many other small telecommunications companies) do not qualify as "small businesses" under the Commission's current definition.

USIN supports meaningful preferences rationally related to the worthwhile goal of ensuring the ability of women and minorities to compete in auctions for narrowband PCS. However, USIN believes that the Commission's rationale for establishing bidding credits for these groups directly supports an equivalent bidding credit for rural telephone companies. Specifically, the Commission notes that companies owned by minorities and women "can play a vital role in serving certain geographic areas and other niche markets that may be overlooked by other industry competitors, thus promoting our goal of universal access to telecommunications services," Third Report & Order, para. 74.

USIN submits that the role of rural telephone companies in doing precisely this - serving overlooked markets, and promoting universal access - is an obvious matter of public record.⁷ Accordingly, an appropriate and equivalent 25% bidding credit should also be made available to rural telephone companies, as well as companies owned by women and minorities. See Third Report & Order, para. 72.

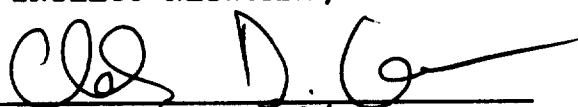
⁷ See, e.g., Second Report & Order, para. 281, citing Comments of NTCA at 7-8

CONCLUSION

For the reasons set forth above, USIN respectfully requests that the Commission reconsider the Order in order to respond to both Congressional directives and the public interest with regard to rural telephone company participation in spectrum auctions.

Respectfully submitted,
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Certificate of Service

I, Charles D. Cosson, hereby certify that copies of the foregoing Petition for Reconsideration of U.S. Intelco Networks, Inc. were served on the 22nd day of June, by first class, U.S. mail, postage prepaid, to the following:


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